

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
ACS of Fairbanks, Inc.'s Petition for Declaratory)	CC Docket No. 96-45
Ruling and Other Relief Pursuant to Section 254(e))	
Of the Communications Act)	
_____)	

**COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION
IN SUPPORT OF ACS OF FAIRBANKS' PETITION**

The Alaska Telephone Association ("ATA") represents fourteen rural incumbent local exchange carriers in Alaska. We support, without reserve, the relief requested by ACS of Fairbanks ("ACS-F") in its petition filed July 24, 2002. We support the specific relief sought by ACS-F for the rural service area generally regarded as Fairbanks, Alaska. Additionally, we support the broad correction in policy that is necessary to protect, from arbitrage and gaming, the universal service support system that guarantees affordable access to customers in rural, high-cost service areas nationally.

ACS of Fairbanks Example

In its petition, ACS-F presented to the Federal Communications Commission ("Commission" or "FCC") an example of abuse that is facilitated by conflicting FCC rules promulgated to implement the Telecommunications Act of 1996. The attempt to satisfy a policy of "competitive neutrality" by compensating one entity based on the actual costs of another (while concurrently making all subsidies explicit) should send multitudes of warning signals to regulators. The statutory requirement that those receipts

be used only for the “provision, maintenance, and upgrading of facilities and services for which that support was intended” is particularly onerous for a competitive eligible telecommunications carrier (“CETC”) that is serving customers through unbundled network elements (“UNEs”). Consider (as ACS-F has demonstrated) the dilemma of a CETC receiving funds based on another’s costs, but without facilities for which those receipts are to be dedicated! Would we expect that CETC to refrain from accepting windfall profits simply because it is able to offer those services over another’s facilities?

High-Cost Loop Support

High-cost loop support (“HCLS”) is available to incumbent local exchange carriers (“ILECs”) with embedded loop costs in excess of 115 percent of the national average. If a CETC receives HCLS equal to the amount the ILEC would have received, there is absolutely no relationship between that amount and the CETC’s loop cost. The standard for the ILEC is 115 percent of the national average. The standard for the CETC is... Well, there is no standard!

Further, states are responsible for certifying annually that each recipient of HCLS is using those funds only for purposes for which they were intended¹. As ACS-F has pointed out, a CETC serving customers through UNEs purchased at a loop cost below 115 percent of the national average, not only has no justification for receiving HCLS, but has no facilities for which this support is specifically intended.

The circumstance presented in the ACS-F petition cited a UNE loop price for Fairbanks of \$19.19 which is well below the national benchmark of approximately \$23 at which an ILEC would qualify for HCLS. Yet the CETC captures \$9.40 which is the

amount of support to which the ILEC (based on its embedded costs) would be entitled. Clearly there is no relevance to competitive neutrality in this policy and there is a direct threat to public access to telecommunications as there is no incentive for either the ILEC or the CETC to invest in infrastructure. The ILEC cannot recover investment costs and the CETC cannot build infrastructure as economically as it can purchase loops.

ETC Certification: Public Interest Determination

The Fairbanks example described here portends a spiral of service deterioration for the local telecommunications customer. There is no monetary incentive for the provider to invest and no fiscal justification for maintenance or enthusiastic customer service. Yet the situation was not unavoidable and perhaps even not unforeseeable. The 1996 Act permits a State commission, in an area served by a rural telephone company, to make a public interest determination prior to granting ETC certification to another common carrier.² Clearly, the public has not been served by the designation of multiple ETCs in the Fairbanks area.

NTCA Petition

The National Telecommunications Cooperative Association (“NTCA”) recently petitioned the Commission for a rulemaking addressing some of these same issues.³ In its discussion of competitive neutrality, NTCA points out that the Commission’s decision

¹ 47 U.S.C. Sec. 254(e).

² 47 U.S.C. 214(e)(2); “...Before designating an additional eligible telecommunications carrier for an area served by a rural telecommunications company, the State commission shall find that the designation is in the public interest.”

³ Petition for Rulemaking to Define “Captured” and “New” Subscriber Lines for Purposes of Receiving Universal Service Support, Pursuant to 47 C.F.R. Sec. 54.307 *et seq.* (July 26, 2002).

that a CETC would receive the same per loop support as the ILEC (based on the ILEC's costs) has "become the basis for unfair competition in high-cost rural service areas and the critical instrument used by CETCs for gaming universal service support dollars that have no relationship to their cost of providing service."⁴ As ACS-F has correctly noted, disaggregation will only serve to more narrowly focus the CETC's attentions on those areas where it can most efficiently pursue its business of gaming.

Conclusion

Nationally, modern telecommunications service in high-cost rural areas is at risk. ACS-F has put before the Commission a case in point of activity that threatens affordable and sustainable telecommunications in Fairbanks, Alaska. ATA encourages the Commission to declare that no eligible telecommunications carrier, ILEC or CETC, shall receive interstate HCLS if its loop costs are below the FCC high-cost standard.

Respectfully submitted,

ALASKA TELEPHONE ASSOCIATION

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⁴ Id. page 8.